IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.2107 OF 2006

Shankara N. Shetty and others ..Petitioners.
Vs.
The State of Maharashtra and others ..Respondents.

….

Mr. J. Reis with Mr. Vinay J. Hedge for the Petitioners.
Ms. Geeta Shastri, AGP for Respondent No.1.
Ms. Kiran Bagalia for Respondent No.2.
Ms. Aruna Savla for the BMC.

….

CORAM : **SWATANTER KUMAR, C.J. &**
DR. D.Y. CHANDRACHUD, J.

Judgment reserved on 4th September, 2007
Judgment pronounced on 27th September, 2007

JUDGMENT (Per Dr. D.Y. Chandrachud, J.)

1. The Petitioners have moved these proceedings under Article 226 of the Constitution seeking reliefs to the effect that (i) a writ of mandamus be issued to the Respondents to "strictly adhere to the development plan and/or consider the existing divider as the center of the Andheri – Ghatkopar Link Road as regular line for widening the said road"; (ii) an order of restraint be issued against the Respondents from demolishing or removing any part of the commercial structures occupied by the Petitioners as part of the

plan for the widening of the Andheri – Ghatkopar Link Road, till the original development plan is implemented and/or the existing divider is considered as the center of the road as regular line for such development.

2. The Respondents to these proceedings are respectively the State of Maharashtra, the Chief Executive Officer of the MMRDA and the Municipal Corporation. MMRDA is a nodal agency entrusted with the implementation of road widening projects of the Municipal Corporation of Greater Mumbai. According to the Petitioners, the commercial structures which are in their occupation are situated on one side of the Andheri – Ghatkopar Link Road and are situated on private land, on the stretch from Asalfa – Sakinaka junction. The road is being widened from 100 ft to 150 ft. The contention of the Petitioners is that the process of road widening should be carried out with reference to the center of the existing road. On the contrary, it has been alleged that the process of road widening is being carried out in violation of the development plan. The submission before the Court is that the road should be widened by considering the center point of the existing road and that both the sides of the road should

be extended equally.

3. Affidavits in reply have been filed in these proceedings by the Respondents. The Deputy Chief Engineer (Traffic) of the Municipal Corporation has filed an affidavit dated 2nd March, 2007 in which it has been stated that the Corporation has prescribed a regular line for a 150 ft. wide road in accordance with the provisions of Section 297(1)(a) of the Mumbai Municipal Corporation Act, 1888 for the portion between Sakinaka and Asalfa village. Further a new road line was prescribed from Asalfa village upto L. B. S. Marg, Ghatkopar in accordance with Section 291 of the Act. The structures of the Petitioners fall within the regular line prescribed between Sakinaka and Asalfa village. In accordance with the request made by MMRDA which was implementing the project, the Municipal Corporation demarcated a portion of the regular line between Sakinaka and Asalfa village at site.

4. MMRDA has clarified in its affidavit that the road alignment is prepared by the Municipal Corporation. The function of MMRDA is to carry out the actual process of road widening which includes demolition of encroachments coming within the

road line and rehabilitation in accordance with law. MMRDA has stated that it is strictly following the road alignment, the plan furnished by the Municipal Corporation and has not deviated there from. MMRDA has denied that it has deviated from the development plan to favour the structures situated on one side of the road. According to MMRDA the Petitioners who are eligible for rehabilitation will be rehabilitated in a brand new authorized structure.

5. In an affidavit filed by the Deputy Director of Town Planning it has been clarified that CTS Nos.248 (Part) and 249 situated along the Andheri – Kurla Link Road are shown as site No.387 in the sanctioned development plan of 'L' ward. The revised development plan was sanctioned by the First Respondent on 7th May, 1992 and came into force on 2nd July, 1992. Under the location plan the land falls under site No.387 and is under reservation for the purpose of a bus depot partly, while the remaining area is earmarked for the development plan road. Regulation 9- IV (b) of the Development Control Regulations of Greater Mumbai, it has been submitted, envisages proposed widening of existing roads/ streets as envisaged by the

development plan or by the prescription of a regular line of street under the Mumbai Municipal Corporation Act, 1888. The Deputy Director of Town Planning has stated that there is no rigid concept of road widening under which an existing road can only be widened with reference to the center of the road and it is open to the Municipal Corporation to fix the regular line of street under Section 297.

6. Having heard the learned counsel appearing on behalf of the contesting parties, we do not find that there is any merit in the grievance raised in the Petition. Section 297(1) (a) of the Mumbai Municipal Corporation Act, 1888 empowers the Municipal Commissioner to fix the road line. The provision is to the following effect.

> "297. Prescribing the regular line of a street – (1) The Commissioner may -
>
> (a) prescribe a line on each side of any public street :
>
> [Provided that in the case of any public street in the suburbs the regular line of a public street operative under any law in force in any part of the suburbs on the day immediately preceding the date of coming into force of the Bombay Municipal (Extension of Limits) Act, 1950, and in the case of any public street in the extended suburbs the regular line of a public street operative under any law in force in any part of the extended suburbs on

> the day immediately preceding the date of the coming into force of the Bombay Municipal [Further Extension of Limits and Schedule BBA (Amendment)] Act, 1956 shall be deemed to be a line prescribed by the Commissioner under this clause.]

7. In the present case, the regular line is prescribed under Section 297(1)(a) for a 150 wide road. As clarified in the affidavit filed by the Deputy Director of Town Planning, site No.387 in the revised development plan of 'L' ward is under reservation for the purpose of a bus depot in part and for the development plan road for the remaining part. The Municipal Corporation is empowered to fix the regular line under Section 297. This exercise cannot be regarded as being contrary to the provisions of the development plan. The provisions of the Maharashtra Regional Town Planning Act, 1966 do not impinge upon the power of the Municipal Commissioner to prescribe the regular line under Section 297(1)(a). In fact the Development Control Regulations for Greater Mumbai, 1991 which are referable to the provisions of Section 22(m) of the Act, contemplate in table IV of Regulation 9 that it is for the Municipal Corporation to deal with proposals for the widening of an existing road or a street envisaged either in the development plan or by prescription of regular line of street under the Bombay

Municipal Corporation Act, 1888. There is therefore no illegality in the action of the Municipal Corporation. MMRDA is an implementing agency. As the affidavit before the Court filed by MMRDA states, MMRDA is carrying out the work of road widening including the demolition of encroachments strictly in accordance with the road alignment plan furnished by the Municipal Corporation. There is no basis for the Court to accept the contention of the Petitioners that in all instances, it is mandatory to follow the center line of the existing road for carrying out road widening. Insofar as the Petitioners are concerned, a statement has already been made by MMRDA that those who are eligible will be rehabilitated in new authorized structures in accordance with law and the prevailing policy.

8. That being the position, we do not find any reason to interfere in the exercise of our writ jurisdiction under Article 226 of the Constitution, particularly because the interference of this Court to stall the implementation of an important public project would clearly not be warranted.

The Petition is accordingly dismissed.

There shall be no order as to costs.

CHIEF JUSTICE

DR. D.Y. CHANDRACHUD, J.